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August 16, 2019

Hon. Robert M. Levy
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Kaplan, et al. v. Central Bank of the Islamic Republic of Iran, et al.*
1:19-cv-03142-ENV-RML

Dear Judge Levy:

We write on behalf of the plaintiffs. On June 28, 2019, counsel for defendant Bank Saderat PLC (“BSPLC”) informed the Court that BSPLC had dismissed its counsel in this case (without substitute) and had decided “with the authority of its Board,” that it “does not intend to participate further in the proceedings in this case.” (DE 82, Memo, at 2). BSPLC further expressly confirmed that it was fully aware that “its decision to no longer defend the lawsuit” would result in the entry of default, and default judgment, against it. *Id.*

On July 1, 2019, the Court ordered that: “Bank Saderat PLC (“BSPLC”) has discharged Pepper Hamilton LLP as counsel and does not intend to participate in this case any further. If BSPLC does wish to continue to participate in this case, it must retain substitute counsel and file a notice of appearance within 45 days. Failure to do so will likely result in a default. Withdrawing counsel shall serve a copy of this order on BSPLC.” Order, 7/1/2019.

The 45-day period has elapsed, and no new counsel have appeared for BSPLC. Accordingly, we respectfully request that the Court direct the Clerk of the Court to enter forthwith the default of defendant Bank Saderat PLC, pursuant to Fed. R. Civ. P. 55(a).¹

Rule 55(a) provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend ... the clerk must enter the party’s default.” Here,

¹ At this stage plaintiffs seek entry of default under Rule 55(a). Following entry of default, plaintiffs will file a separate motion for entry of default *judgment* pursuant to Rule 55(b)(2).

BSPLC has explicitly informed the Court that it decided “to no longer defend the lawsuit.” (DE 82, Memo, at 2). Entry of default is therefore mandatory. “Under Rule 55(a) ... ‘[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend..., the clerk must enter the party’s default.’ The entry of default is therefore not discretionary.” *Bricklayers & Allied Craftworkers Local 2 v. Moulton Masonry*, 779 F.3d 182, 186 (2d Cir. 2015).

In addition to its frankly-stated refusal to defend this case, BSPLC’s default must be entered because it is a corporation, yet has dismissed its counsel. *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 130 (2d Cir. 2011) (“a Rule 55(a) default was also proper...as this defendant withdrew its counsel without retaining a substitute.”) (citing cases).

Notably, BSPLC recently followed the identical course – dismissing its counsel, ceasing participation, and intentionally defaulting – in another case pending in this Court, *Lelchook v. Islamic Republic of Iran, et al.*, 1:16-cv-07078-ILG-RLM. See Order dated 9/21/18 (entering default against BSPLC in *Lelchook*) (Exhibit A).

BSPLC’s default should therefore be entered in this case forthwith.

We also respectfully request that the Court direct the Clerk to modify BSPLC’s address of record in this action, for the purpose of service under Fed. R. Civ. P. 77(d)(1) and any other purpose required or permitted by the Federal Rules or the Local Rules of this Court, to reflect the address provided by BSPLC’s withdrawing counsel in his Affidavit in Support of Motion to Withdraw. That address is: Bank Saderat, PLC, 5 Lothbury, London, UK, EC2R 7HD. (See Affidavit of Jeremy D. Frey, DE 82-1, at ¶ 4).

We thank you for your consideration.

Respectfully,


Robert J. Tolchin

CERTIFICATE OF SERVICE

I certify that on August 16, 2019, the within letter was served on defendant Bank Saderat, PLC, by first class U.S. mail, postage prepaid, to: 5 Lothbury, London, UK, EC2R 7HD; and by email to borhani@saderat-plc.com.



Robert J. Tolchin